

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE WORLD TRADE CENTER
DISASTER SITE LITIGATION

JAMES K SMITH AND SUSIE SMITH

Plaintiffs,

- against -

A RUSSO WRECKING, ET. AL.,

SEE ATTACHED RIDER,

Defendants.

21 MC 100 (AKH)

DOCKET NO.

**CHECK-OFF ("SHORT FORM")
COMPLAINT
RELATED TO THE
MASTER COMPLAINT**

**PLAINTIFF(S) DEMAND A TRIAL BY
JURY**

By Order of the Honorable Alvin K. Hellerstein, United States District Judge, dated June 22, 2006, ("the Order"), Amended Master Complaints for all Plaintiffs were filed on August 18, 2006.

NOTICE OF ADOPTION

All headings and paragraphs in the Master Complaint are applicable to and are adopted by the instant Plaintiff(s) as if fully set forth herein in addition to those paragraphs specific to the individual Plaintiff(s), which are listed below. These are marked with an "✓" if applicable to the instant Plaintiff(s), and specific case information is set forth, as needed, below.

Plaintiffs, JAMES K SMITH AND SUSIE SMITH, by his/her/their attorneys WORBY GRONER EDELMAN & NAPOLI BERN, LLP, complaining of Defendant(s), respectfully allege:

I. PARTIES

A. PLAINTIFF(S)

1. ✓ Plaintiff, JAMES K SMITH (hereinafter the "Injured Plaintiff"), is an individual and a citizen of New York residing at 146 Bryant Avenue, Staten Island, NY 10306-0000.

(OR)

2. Alternatively, □ _____ is the _____ of Decedent _____, and brings this claim in his (her) capacity as _____ of the Estate of _____.

Please read this document carefully.

It is very important that you fill out each and every section of this document.

3. Plaintiff, Susie Smith (hereinafter the "Derivative Plaintiff"), is a citizen of New York residing at 146 Bryant Avenue, Staten Island, NY 10306-0000, and has the following relationship to the Injured Plaintiff:

- SPOUSE at all relevant times herein, is and has been lawfully married to Plaintiff JAMES K SMITH, and brings this derivative action for her (his) loss due to the injuries sustained by her husband (his wife), Plaintiff JAMES K SMITH.
- Parent Child Other: _____

4. In the period from to the Injured Plaintiff worked for Fire Department New York (FDNY) as a Firefighter at:

Please be as specific as possible when filling in the following dates and locations

The World Trade Center Site

Location(s) (i.e., building, quadrant, etc.) _____

From on or about To Be Provided until To Be Provided;
Approximately To Be Provided hours per day; for
Approximately To Be Provided days total.

The New York City Medical Examiner's Office

From on or about _____ until _____,
Approximately _____ hours per day; for
Approximately _____ days total.

The Fresh Kills Landfill

From on or about _____ until _____;
Approximately _____ hours per day; for
Approximately _____ days total.

The Barge

From on or about _____ until _____;
Approximately _____ hours per day; for
Approximately _____ days total.

Other*: For injured plaintiffs who worked at

Non-WTC Site building or location. The injured plaintiff worked at the address/location, for the dates alleged, for the hours per day, for the total days, and for the employer, as specified below:

From on or about _____ until _____;
Approximately _____ hours per day; for
Approximately _____ days total;
Name and Address of Non-WTC Site
Building/Worksite: _____

*Continue this information on a separate sheet of paper if necessary. If more space is needed to specify "Other" locations, please annex a separate sheet of paper with the information.

5. Injured Plaintiff

- Was exposed to and breathed noxious fumes on all dates, at the site(s) indicated above;
- Was exposed to and inhaled or ingested toxic substances and particulates on all dates at the site(s) indicated above;
- Was exposed to and absorbed or touched toxic or caustic substances on all dates at the site(s) indicated above;
- Other: Not yet determined.

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6. Injured Plaintiff

- Has not made a claim to the Victim Compensation Fund. Pursuant to §405(c)(3)(B)(i) of the Air Transportation Safety and System Stabilization Act, 49 U.S.C. § 40101, the issue of waiver is inapplicable.
- Made a claim to the Victim Compensation Fund that was denied. Pursuant to § 405(c)(3)(B)(i) of the Air Transportation Safety and System Stabilization Act, 49 U.S.C. § 40101, the issue of waiver is inapplicable.
- Made a claim to the Victim Compensation Fund, that was subsequently withdrawn by Ground-Zero Plaintiff. Pursuant to § 405(c)(3)(B)(i) of the Air Transportation Safety and System Stabilization Act, 49 U.S.C. § 40101, the issue of waiver is inapplicable.
- Made a claim to the Victim Compensation Fund that was granted. Pursuant to § 405(c)(3)(B)(i) of the Air Transportation Safety and System Stabilization Act, 49 U.S.C. § 40101, Ground Zero-Plaintiff has waived her/his right(s) to pursue any further legal action for the injuries identified in said claim.

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B. DEFENDANT(S)

The following is a list of all Defendant(s) named in the Master Complaint. If checked, all paragraphs pertaining to that Defendant are deemed pleaded herein.

 THE CITY OF NEW YORK

- A Notice of Claim was timely filed and served on _____ and
- pursuant to General Municipal Law §50-h the CITY held a hearing on _____ (OR)
 - The City has yet to hold a hearing as required by General Municipal Law §50-h
 - More than thirty days have passed and the City has not adjusted the claim
(OR)

An Order to Show Cause application to
 deem Plaintiff's (Plaintiffs') Notice of Claim timely filed, or in the alternative to grant Plaintiff(s) leave to file a late Notice of Claim *Nunc Pro Tunc* (for leave to file a late Notice of Claim *Nunc Pro Tunc*) has been filed and a determination

- is pending
 - Granting petition was made on _____
 - Denying petition was made on _____
-

 PORT AUTHORITY OF NEW YORK AND NEW JERSEY ["PORT AUTHORITY"]

- A Notice of Claim was filed and served pursuant to Chapter 179, §7 of The Unconsolidated Laws of the State of New York on
 - More than sixty days have elapsed since the Notice of Claim was filed, (and)
 - the PORT AUTHORITY has adjusted this claim
 - the PORT AUTHORITY has not adjusted this claim.
-

 1 WORLD TRADE CENTER, LLC

- 1 WTC HOLDINGS, LLC
- 2 WORLD TRADE CENTER, LLC
- 2 WTC HOLDINGS, LLC
- 4 WORLD TRADE CENTER, LLC
- 4 WTC HOLDINGS, LLC
- 5 WORLD TRADE CENTER, LLC
- 5 WTC HOLDINGS, LLC
- 7 WORLD TRADE COMPANY, L.P.

- A RUSSO WRECKING
- ABM INDUSTRIES, INC.
- ABM JANITORIAL NORTHEAST, INC.
- AMEC CONSTRUCTION MANAGEMENT, INC.
- AMEC EARTH & ENVIRONMENTAL, INC.
- ANTHONY CORTESE SPECIALIZED HAULING, LLC, INC.
- ATLANTIC HEYDT CORP
- BECHTEL ASSOCIATES PROFESSIONAL CORPORATION
- BECHTEL CONSTRUCTION, INC.
- BECHTEL CORPORATION
- BECHTEL ENVIRONMENTAL, INC.
- BERKEL & COMPANY, CONTRACTORS, INC.
- BIG APPLE WRECKING & CONSTRUCTION CORP
- BOVIS LEND LEASE, INC.
- BOVIS LEND LEASE LMB, INC.
- BREEZE CARTING CORP
- BREEZE NATIONAL, INC.
- BRER-FOUR TRANSPORTATION CORP.
- BURO HAPPOLD CONSULTING ENGINEERS, P.C.
- C.B. CONTRACTING CORP
- CANRON CONSTRUCTION CORP
- CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
- CORD CONTRACTING CO., INC
- CRAIG TEST BORING COMPANY INC.
- DAKOTA DEMO-TECH
- DIAMOND POINT EXCAVATING CORP
- DIEGO CONSTRUCTION, INC.
- DIVERSIFIED CARTING, INC.
- DMT ENTERPRISE, INC.
- D'ONOFRIO GENERAL CONTRACTORS CORP
- EAGLE LEASING & INDUSTRIAL SUPPLY
- EAGLE ONE ROOFING CONTRACTORS INC.
- EAGLE SCAFFOLDING CO, INC.
- EJ DAVIES, INC.
- EN-TECH CORP
- ET ENVIRONMENTAL
- EVANS ENVIRONMENTAL

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EVERGREEN RECYCLING OF CORONA
 EWELL W. FINLEY, P.C.
 EXECUTIVE MEDICAL SERVICES, P.C.
 F&G MECHANICAL, INC.
 FLEET TRUCKING, INC.
 FRANCIS A. LEE COMPANY, A CORPORATION
 FTI TRUCKING
 GILSANZ MURRAY STEFICEK, LLP
 GOLDSTEIN ASSOCIATES CONSULTING ENGINEERS, PLLC
 HALLEN WELDING SERVICE, INC.
 H.P. ENVIRONMENTAL
 HUDSON MERIDIAN CONSTRUCTION GROUP, LLC F/K/A MERIDIAN CONSTRUCTION CORP.
 KOCH SKANSKA INC.
 LAQUILA CONSTRUCTION INC
 LASTRADA GENERAL CONTRACTING CORP
 LESLIE E. ROBERTSON ASSOCIATES CONSULTING ENGINEER P.C.
 LIBERTY MUTUAL GROUP
 LOCKWOOD KESSLER & BARTLETT, INC.
 LUCIUS PITKIN, INC
 LZA TECH-DIV OF THORTON TOMASETTI
 MANAFORT BROTHERS, INC.
 MAZZOCCHI WRECKING, INC.
 MORETRENCH AMERICAN CORP.
 MRA ENGINEERING P.C.
 MUESER RUTLEDGE CONSULTING ENGINEERS
 NACIREMA INDUSTRIES INCORPORATED
 NEW YORK CRANE & EQUIPMENT CORP.
 NICHOLSON CONSTRUCTION COMPANY
 PETER SCALAMANDRE & SONS, INC.
 PHILLIPS AND JORDAN, INC.
 PINNACLE ENVIRONMENTAL CORP
 PLAZA CONSTRUCTION CORP.
 PRO SAFETY SERVICES, LLC
 PT & L CONTRACTING CORP
 REGIONAL SCAFFOLD & HOISTING CO, INC.
 ROBER SILMAN ASSOCIATES
 ROBERT L GEROSA, INC
 RODAR ENTERPRISES, INC.
 ROYAL GM INC.
 SAB TRUCKING INC.
 SAFEWAY ENVIRONMENTAL CORP
 SEASONS INDUSTRIAL CONTRACTING

SEMCOR EQUIPMENT & MANUFACTURING CORP.
 SILVERITE CONTRACTING CORPORATION
 SILVERSTEIN PROPERTIES
 SILVERSTEIN PROPERTIES, INC.
 SILVERSTEIN WTC FACILITY MANAGER, LLC
 SILVERSTEIN WTC, LLC
 SILVERSTEIN WTC MANAGEMENT CO., LLC
 SILVERSTEIN WTC PROPERTIES, LLC
 SILVERSTEIN DEVELOPMENT CORP.
 SILVERSTEIN WTC PROPERTIES LLC
 SIMPSON GUMPERTZ & HEGER INC
 SKIDMORE OWINGS & MERRILL LLP
 SURVIAIR
 TAYLOR RECYCLING FACILITY LLC
 TISHMAN INTERIORS CORPORATION,
 TISHMAN SPEYER PROPERTIES,
 TISHMAN CONSTRUCTION CORPORATION OF MANHATTAN
 TISHMAN CONSTRUCTION CORPORATION OF NEW YORK
 THORNTON-TOMASETTI GROUP, INC.
 TORRETTA TRUCKING, INC
 TOTAL SAFETY CONSULTING, L.L.C
 TUCCI EQUIPMENT RENTAL CORP
 TULLY CONSTRUCTION CO., INC.
 TULLY ENVIRONMENTAL INC.
 TULLY INDUSTRIES, INC.
 TURNER CONSTRUCTION CO.
 TURNER CONSTRUCTION COMPANY
 ULTIMATE DEMOLITIONS/CS HAULING
 VERIZON NEW YORK INC,
 VOLLMER ASSOCIATES LLP
 W HARRIS & SONS INC
 WEEKS MARINE, INC.
 WEIDLINGER ASSOCIATES, CONSULTING ENGINEERS, P.C.
 WHITNEY CONTRACTING INC.
 WOLKOW-BRAKER ROOFING CORP
 WORLD TRADE CENTER PROPERTIES, LLC
 WSP CANTOR SEINUK GROUP
 YANNUZZI & SONS INC
 YONKERS CONTRACTING COMPANY, INC.
 YORK HUNTER CONSTRUCTION, LLC
 ZIEGENFUSS DRILLING, INC.
 OTHER: _____

Please read this document carefully.

It is very important that you fill out each and every section of this document.

Non-WTC Site Building Owner

Name: _____

Business/Service Address: _____

Building/Worksite Address: _____

Non-WTC Site Lessee

Name: _____

Business/Service Address: _____

Building/Worksite Address: _____

Non-WTC Site Building Managing Agent

Name: _____

Business/Service Address: _____

Building/Worksite Address: _____

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II. JURISDICTION

The Court's jurisdiction over the subject matter of this action is:

- Founded upon Federal Question Jurisdiction; specifically; Air Transport Safety & System Stabilization Act of 2001, (or); Federal Officers Jurisdiction, (or); Other (specify): _____; Contested, but the Court has already determined that it has removal jurisdiction over this action, pursuant to 28 U.S.C. § 1441.

III CAUSES OF ACTION

Plaintiff(s) seeks damages against the above named defendants based upon the following theories of liability, and asserts each element necessary to establish such a claim under the applicable substantive law:

<input checked="" type="checkbox"/>	Breach of the defendants' duties and obligations pursuant to the New York State Labor Law(s) including §§ 200 and 240	<input checked="" type="checkbox"/>	Common Law Negligence, including allegations of Fraud and Misrepresentation
<input checked="" type="checkbox"/>	Breach of the defendants' duties and obligations pursuant to the New York State Labor Law 241(6)		<input checked="" type="checkbox"/> Air Quality; <input checked="" type="checkbox"/> Effectiveness of Mask Provided; <input type="checkbox"/> Effectiveness of Other Safety Equipment Provided
<input checked="" type="checkbox"/>	Pursuant to New York General Municipal Law §205-a		(specify: _____); <input checked="" type="checkbox"/> Other(specify): <u>Not yet determined.</u>
<input type="checkbox"/>	Pursuant to New York General Municipal Law §205-e	<input type="checkbox"/>	Wrongful Death
		<input checked="" type="checkbox"/>	Loss of Services/Loss of Consortium for Derivative Plaintiff
		<input type="checkbox"/>	Other: _____

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IV CAUSATION, INJURY AND DAMAGE

1. As a direct and proximate result of defendant's culpable actions in the rescue and/or recovery and/or construction, renovation, alteration, demolition and all work performed at the premises, the Injured Plaintiff sustained (including, but not limited to) the following injuries:

<input type="checkbox"/>	Cancer Injury: <u>N/A</u> . Date of onset: _____ Date physician first connected this injury to WTC work: _____	<input type="checkbox"/>	Cardiovascular Injury: <u>N/A</u> . Date of onset: _____ Date physician first connected this injury to WTC work: _____
<input checked="" type="checkbox"/>	Respiratory Injury: <u>Cough; Shortness of Breath; Sinus Problems; Wheezing</u> Date of onset: <u>1/11/2008</u> Date physician first connected this injury to WTC work: <u>To be supplied at a later date</u>	<input checked="" type="checkbox"/>	Fear of Cancer Date of onset: <u>1/11/2008</u> Date physician first connected this injury to WTC work: <u>To be supplied at a later date</u>
<input type="checkbox"/>	Digestive Injury: <u>N/A</u> . Date of onset: _____ Date physician first connected this injury to WTC work: _____	<input checked="" type="checkbox"/>	Other Injury: <u>Sleeping Problems</u> Date of onset: <u>1/11/2008</u> Date physician first connected this injury to WTC work: <u>To be supplied at a later date</u>

NOTE: The foregoing is NOT an exhaustive list of injuries that may be alleged.

2. As a direct and proximate result of the injuries identified in paragraph "1", above, the Ground Zero-Plaintiff has in the past suffered and/or will in the future suffer the following compensable damages:

- Pain and suffering
 - Loss of the enjoyment of life
 - Loss of earnings and/or impairment of earning capacity
 - Loss of retirement benefits/diminution of retirement benefits
 - Expenses for medical care, treatment, and rehabilitation
 - Other:
 - Mental anguish
 - Disability
 - Medical monitoring
 - Other: Not yet determined.

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3. As a direct and proximate result of the injuries described *supra*, the derivative plaintiff(s), if any, have in the past suffered and/or will in the future suffer a loss of the love, society, companionship, services, affection, and support of the plaintiff and such other losses, injuries and damages for which compensation is legally appropriate.

WHEREFORE, plaintiff(s) respectfully pray that the Court enter judgment in his/her/their favor and against defendant(s) for damages, costs of suit and such other, further and different relief as may be just and appropriate.

Plaintiff(s) demands that all issues of fact in this case be tried before a properly empanelled jury.

Dated: New York, New York

February 18, 2008

Yours, etc.,

Worby, Groner Edelman & Napoli Bern, LLP

Attorneys for Plaintiff(s), James K Smith and Susie Smith

By: 

Christopher R. LoPalo (CL 6466)
115 Broadway
12th Floor
New York, New York 10006
Phone: (212) 267-3700

ATTORNEY VERIFICATION

CHRISTOPHER R. LOPALO, an attorney at law, duly admitted to practice in the Courts of the State of New York, affirms under the penalties of perjury that:

He is the attorney for the plaintiff(s) in the above-entitled action. That he has read the foregoing SUMMONS AND VERIFIED COMPLAINT and knows the contents thereof, and upon information and belief, deponent believes the matters alleged therein to be true.

The reason this Verification is made by deponent and not by the plaintiff(s) is that the plaintiff(s) herein reside(s) in a county other than the one in which the plaintiff's attorneys maintain their office.

The source of deponent's information and the grounds of his belief are communication, papers, reports and investigation contained in the file.

DATED: *New York, New York*
 February 18, 2008



CHRISTOPHER R. LOPALO

Docket No:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMES K SMITH (AND WIFE, SUSIE SMITH),

Plaintiff(s)
- against -

A RUSSO WRECKING, ET. AL.,

Defendant(s).

SUMMONS AND VERIFIED COMPLAINT

WORBY GRONER EDELMAN & NAPOLI BERN, LLP

Attorneys for: Plaintiff(s)
Office and Post Office Address, Telephone
115 Broadway - 12th Floor
New York, New York 10006
(212) 267-3700

To
Attorney(s) for

Service of a copy of the within
is hereby admitted.

Dated,

Attorney(s) for

PLEASE TAKE NOTICE:

NOTICE OF ENTRY
that the within is a (certified) true copy of an
duly entered in the office of the clerk of the within named court on 20

NOTICE OF SETTLEMENT
that an order _____ of which the within is a true copy
will be presented for settlement to the HON. _____ one of the
judges of the _____
within named Court, at _____
on 20 _____ at _____ M.
Dated,

Yours, etc.,
WORBY GRONER EDELMAN & NAPOLI BERN, LLP